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8 UNITED STATES DISTRICT COURT
9 WESTERN DISTRICT OF WASHINGTON
10 AT TACOMA

11 PATRICK STEARNS.

12 Plaintiff,

13 v.

14 WASHINGTON STATE DEPARTMENT
15 OF SOCIAL HEALTH SERVICES, et al.,

16 Defendants.

CASE NO. C11-5422BHS/JRC

ORDER DIRECTING PLAINTIFF TO
CURE DEFICIENT COMPLAINT

17 The Court has reviewed plaintiff's proposed complaint (ECF Nos. 1, 4). Plaintiff
18 complains of alleged Fourth and Fourteenth Amendment violations. He does not name a person
19 as a defendant -- only a state agency.

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21 In order to state a claim under 42 U.S.C. § 1983, a complaint must allege that: (1) the
22 conduct complained of was committed by a person acting under color of state law; and (2) the
23 conduct deprived a person of a right, privilege, or immunity secured by the Constitution or laws
24 of the United States. Parratt v. Taylor, 451 U.S. 527, 535 (1981), *overruled on other grounds*,
25 Daniels v. Williams, 474 U.S. 327 (1986). Section 1983 is the appropriate avenue to remedy an
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1 alleged wrong only if both of these elements are present. Haygood v. Younger, 769 F.2d 1350,
2 1354 (9th Cir. 1985), *cert. denied*, 478 U.S. 1020 (1986).

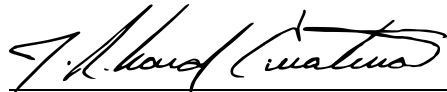
3 Neither states nor state officials acting in their official capacities are “persons” for
4 purposes of 42 U.S.C. § 1983. Will v. Michigan Dept. of State Police, 491 U.S. 58, 71 (1989).

5 The Eleventh Amendment prohibits a state being sued in federal court for damages. See
6 Seminole Tribe of Florida v. Florida 517 U.S. 44, 72 (1996) *overruled in part by Cent. Va.*
7 Cnty. College v. Katz, 546 U.S. 356, 363 (2006); Natural Resources Defense Council v.
8 California Dep't of Transportation, 96 F.3d 420, 421 (9th Cir. 1996).

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10 This defect could be cured. Plaintiff should be given the opportunity to amend the
11 complaint. Plaintiff is directed to file an amended complaint that cures the defect noted above. A
12 response is due on or before July 8, 2011

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14 The Clerk is directed to send a copy of this order to plaintiff, and note the July 8, 2011
15 due date on the court calendar.

16 DATED this 13th day of June, 2011.

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19 J. Richard Creatura
20 United States Magistrate Judge
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